

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Crl.Misc.Petition No.1238-M of 2007
Date of Decision: 29.1.2007

Gurpreet Singh.

..... Petitioner

Versus

State of Punjab and another.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Vikas Bahl, Advocate for the petitioner.
Shri Ashutosh Hoshiarpuri, A.A.G., Punjab for the State.
Shri Ashok Giri, Advocate for respondent no.2-complainant.

....

Mahesh Grover,J.

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for quashing of F.I.R.No.107 dated 7.9.1999 under Sections 323, 342, 506, 148, 149 of the Indian Penal Code registered at Police Station, Banga, District Nawanshahr, as also for setting aside all other consequential proceedings taken pursuant to the aforementioned F.I.R.

Narinder Singh son of Jarnail Singh, resident of village Mehli (respondent no.2) was the informant, who stated that on 3.9.1999 at about 9.15 A.M., he had reached the bus stand of the village from his house in

order to go to attend the Rally which was to be addressed by the Prime Minister. While he was waiting for the local Legislator at the bus stand, Baldev Singh son of Gajan Singh, Jagroop Singh son of Satnam Singh, Amrik Singh son of Avtar Singh, all residents of his village came there on a motor cycle. Gurpreet Singh son of Charanjit Singh (present petitioner) armed with a dattar, Hardip Singh son of Kukku, armed with Hockey, jaswinder Singh @ Barder son of Amar Chand, Jaswant Singh son of Gurpa Singh, Charanjit Singh son of Gurpal Singh, Sukha son of Karnail Singh, who were already standing nearby, came over to the spot. Baldev Singh then raised a lalkara saying that “yesterday the complainant had escaped, but today he should not be spared”. Upon this, Jaswinder Singh caught hold of the complainant while Gurpreet Singh gave a dattar blow from reverse side which landed on his head as a result of which he fell down. Thereupon, Hardip Singh gave hockey blow upon which the complainant raised an alaram. Thereafter, all the above persons picked the complainant up and took him to a khurali near the gate and beat him up. The complainant continued to raise an alarm which attracted Harnek Singh son of Harbhajan Singh and Lakhbir Singh son of Harbhajan Singh, residents of the village, who witnessed the occurrence. After seeing the said persons, all the assailants fled away from the spot. The complainant was then taken to the hospital by Lakhbir Singh, who arranged a scooter, where he was medically examined. The matter was reported to the police, who, after completion of investigation, filed a challan in the Court against all the accused persons named in the F.I.R. including the petitioner.

Gurpreet Singh (present petitioner) and Hardip Singh did not face trial and they were declared Proclaimed Offenders.

All other accused persons, who went to trial, were acquitted of the charges by the trial Court.

The complainant, who was examined as PW4, did not support the prosecution version and stated that he had not given the names of the accused persons before the police.

The present petition has been filed by Gurpreet Singh to contend that in view of the fact that the complainant has failed to support the prosecution version and all other accused persons, who went to trial, have been acquitted, as also the fact that the parties have entered into a compromise, no fruitful purpose would be served by persisting with the trial of the case qua the petitioner, even if he is to submit to the jurisdiction of the trial Court. Copy of the compromise on which reliance has been placed has been attached with this petition as Annexure P1 and copy of judgment dated 18.10.2006 of the learned Judicial Magistrate Ist Class, Nawanshahr awarding acquittal to the rest of the accused persons has also been enclosed as Annexure P4.

Upon notice, the complainant appeared through counsel and submitted his reply on affidavit admitting the factum of compromise.

After hearing learned counsel for the parties and perusing the paper-book, I am of the considered opinion that the petition deserves to succeed.

There is no doubt that the case against the petitioner-Gurpreet Singh and the other accused persons is on the same footing. The set of evidence collected by the prosecution is the same which resulted in the acquittal of other co-accused. The complainant also failed to support the case of the prosecution and now, a compromise has also been effected

which is not disputed by the counsel for the complainant. In view of this, it would be a sheer wastage of time of the Court if the proceedings are permitted to go on.

The Supreme Court in the judgment reported as 1988 (1) R.C.R. 565- Madhavrao Jiwajirao Scindia and others Versus Sambhajirao Chandrojirao Angre and others, has observed as follows:-

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution case to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.”

(Emphasis supplied)

Concededly, there is no principle of law which lays down that if the Court acquits some of the accused persons on the evidence of a witness, which raises some doubt regarding their complicity qua them; then the other accused against whom there is evidence, establishing their complicity, be also acquitted. But, at the same time, the Court has to

examine that whether the evidence against all the accused persons is inseparable and indivisible; if so, then if some persons have been acquitted on the strength of such evidence, the rest of the accused persons cannot be treated differently.

In the instant case, not only is the evidence inseparable and indivisible qua the petitioner, the additional factor is that the complainant has refused to support the prosecution case and the matter has been compromised.

The Supreme Court in a judgment reported as 2003(2) R.C.R. (Criminal) 888 – B.S.Joshi and others Versus State of Haryana and others, has held that where the parties have entered into a compromise and there is bleak chance of a person being convicted and the offences are uncompoundable, then in such an eventuality, the proceedings should be quashed and the provisions of Section 320 of the Cr.P.C. would not be a bar to the exercise of quashing.

For the afore-stated reasons, the continuance of the trial qua the petitioner in view of the facts detailed above would be a futile exercise and would result in sheer wastage of time of the Court. This petition is, therefore, accepted and the F.I.R. in question and the consequent proceedings taken qua the petitioner are quashed.

January 29,2007
“SCM”

(Mahesh Grover)
Judge